



WILLIAMS MULLEN

Direct Dial: 804.783.6904
tnicholson@williamsmullen.com

February 10, 2003

BY HAND

Honorable Joel H. Peck, Clerk
State Corporation Commission
c/o Document Control Center
1300 East Main Street - 1st Floor
P. O. Box 2118
Richmond, Virginia 23218

603 FEB 10 PM 4:42

DOCUMENT CONTROL

Re: Commonwealth of Virginia Ex Rel. State Corporation Commission
Ex Parte: In the matter concerning the provision of default service to retail customers
under the provisions of the Virginia Electric Utility Restructuring Act
Case No. PUE-2002-00645

Dear Mr. Peck:

Pursuant to Ordering Paragraph 4 of the December 23, 2002 order of the State Corporation Commission in the above-captioned matter are an original and 15 copies of the comments of the VML/VACo APCo Steering Committee on the Commission's determination of the components of default service. These comments are filed one business day out of time, due to internal processing problems.

Please kindly date stamp the two extra copies and provide them to the courier for return to our office. If you have any questions, please do not hesitate to contact me. Thank you for your assistance with this matter.

Very truly yours,

Thomas B. Nicholson

TBN:acd
Enclosures
cc: Service List (w/enclosures)

I:\WMCDLIB\TNICHOLS\0902242.0

A Professional Corporation

MICHIGAN • VIRGINIA • WASHINGTON, D.C. • LONDON

Two James Center 1021 East Cary Street (23219) P.O. Box 1320 Richmond, VA 23218-1320 Tel: 804.643.1991 Fax: 804.783.6507
www.williamsmullen.com

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA)	
)	
At the relation of the)	
)	
STATE CORPORATION COMMISSION)	CASE NO. PUE-2002-00645
)	
Ex Parte: In the matter concerning)	
the provision of default service to retail)	
customers under the provisions of the)	
Virginia Electric Utility Restructuring Act)	

COMMENTS OF THE VML/VACo APCo STEERING COMMITTEE

In its *Order Establishing Investigation* dated December 23, 2002 ("December 23 Order") in the above-captioned docket, the State Corporation Commission ("Commission") requested input and recommendations concerning a number of issues related to the components of default service and the establishment of one or more programs making such services available to retail customers in furtherance of its statutory obligations under § 56-585 of the Virginia Electric Utility Restructuring Act ["Restructuring Act" or "Act", § 56-576 *et seq.* of Title 56 of the Code of Virginia ("Va. Code" or "Code")].

The Virginia Municipal League ("VML") and the Virginia Association of Counties ("VACo") together have established the VML/VACo APCo Steering Committee ("Steering Committee"), which is comprised of representatives of local governments and other political subdivisions of the Commonwealth served by the Company (the "Public Authorities" or "PA Customers"). Each of the Public Authorities has the requisite authority to negotiate the terms for the purchase of electricity from

Appalachian Power Company d/b/a American Electric Power ("APCo"), an operating company subsidiary of American Electric Power ("AEP"). Each of the Public Authorities presently purchases electric transmission, distribution and generation services from APCo.

The Steering Committee, by counsel, hereby files its comments in response to certain of the Commission's questions posed its December 23 Order. While the Commission's questions are pertinent, the Steering Committee's responses at this time are tentative, as more definitive responses to many of the questions will be influenced by the outcome of the efforts by AEP and others to join the PJM Interconnection, LLC ("PJM"), an organization responsible for the operation and control of the bulk electric power system throughout major portions of five Mid-Atlantic states and the District of Columbia. PJM is a regional transmission entity ("RTE", also referred to as a Regional Transmission Organization or "RTO" by the FERC)¹ based in Pennsylvania.² In addition to operating a multi-state transmission system, PJM also operates associated wholesale, FERC-regulated electricity trading markets.

In order to frame appropriate responses, it is necessary to consider some of the Commission's questions from the perspectives of both the default provider and the retail customer. While some questions are directed to the identity of the default provider, in all instances the retail customer will be the same, provided the customer satisfies one of three conditions enumerated in the Act. Default service, as defined in the Act, means service made available to retail customers pursuant to Code § 56-585 who (i) do not

¹ The acronyms RTE and RTO may be used interchangeably; however, since the entity is subject to FERC jurisdiction, these comments will refer to the entity as an RTO.

² On December 20, 2002, FERC issued an order granting PJM status as an RTO.

affirmatively select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted with an alternative supplier who fails to perform.

From the perspective of the Steering Committee, it is critical that the Commission recognize that this obligation to determine the specific components of default service, and its regulation of the rates or charges for such service, extends to default service provided to the Commonwealth and its municipalities. Code § 56-581 C. The Act defines “municipality” as “a city, county, town, authority or other political subdivision of the Commonwealth.” Code § 56-576.

(1) What should be the specific components of default service;

As a fundamental matter, the components of default service must include at a minimum all aspects of electric service that are necessary to serve a retail customer that the customer cannot acquire from an alternative supplier under the conditions delineated in the Act. Whether a service may be or will become available from an alternative provider depends upon the nature of the service, and may change over time. *See, e.g.,* Code § 56-581.1, *Competitive retail electric billing and metering*. Moreover, as suggested by the responses below, there must be a ready, willing, and able provider for such service to be available.³ Accordingly, the components of default service may change as conditions warrant.

³ Licensing conditions may also need to be satisfied.

- (2) Whether, given the virtual absence of competition in Virginia's retail generation market, incumbent electric utilities should continue to provide default service at capped rates at the present time; if so, what changes in statute, policy, infrastructure, market conditions, and/or other circumstances are necessary to allow for the practical provision of default service by an entity other than the incumbent?**

A Virginia incumbent electric utility should continue to provide default service at capped rates until such time as an alternative supplier can provide such service at a price that will beat the utility's capped rates and save retail electric customers money as compared with a utility's capped rates. As the Act has been implemented with respect to generation services, market conditions and other barriers to entry have not permitted this activity to develop.

While it might appear that the same market conditions that have resulted in the virtual absence of competition also would not provide an opportunity for an alternative provider to provide generation-based services to individual retail customers, this might not be so if the provider's barriers to entry were reduced. To stay in business, an alternative provider must be able to beat a wholesale generation price benchmark established by the Commission, recover its costs for providing the service (including acquisition and maintenance of its customer base, overhead, and other fixed and variable costs), and produce a profit. The virtual absence of competition is strong evidence that market conditions are not favorable in the near term.⁴

On the other hand, the ability of a well-positioned provider to supply service on an aggregated basis, without the per-customer acquisition costs, may produce sufficient

⁴ As an observation, a supplier must be able to sell to a customer during the less expensive, "shoulder" or non-peak seasons in order to offset the higher electricity costs it incurs to provide electricity during a utility's peak season. Thus, if there are no retail offers extended in Virginia in the near term, Virginia may see no individual retail activity during 2003.

economies of scale to permit savings to be achieved and to result in market penetration.

Without testing the market, however, such discourse remains an untested theory.

- (3) What should be the geographic scope of a default service provider's territory, i.e. statewide, incumbent utility service territory, regions served by specific regional transmission entities; divisions with an incumbent utility's service territory; major metropolitan and surrounding areas, etc.;**

While electricity is a bulk commodity, the retail rates of Virginia's utilities vary. Indeed, even within a utility's service territory, characteristics of different customers cause their rates and the utility's costs of serving them to vary. Thus, as a practical matter, it may make sense from a potential supplier's perspective to target a particular utility, as well as to focus on serving certain classes of the utility's customers. On the other hand, a statewide auction may produce different results. At least one state has opted for this approach.⁵

Such determinations will become more complicated if, and how, locational marginal pricing ("LMP") and congestion revenue rights ("CRRs") are introduced. Presently, a utility's rates socialize the cost of serving customers in different locations when there is congestion on the utility's transmission system. With LMP, these cost differentials become visible price signals that are supposed to encourage infrastructure investment (generation and/or transmission) and/or load management, while CRRs are designed to act as a hedge against the costs of congestion. A prospective supplier may be reluctant to commit to serving customers without knowing up front how a particular LMP/CRR regime will impact its costs.

⁵ For New Jersey's approach to generation-related default service following the expiration of mandatory rate caps, see response to question 5 below.

- (4) **Whether default service, as contemplated by § 56-585 of the Act, should be limited to unregulated services, i.e. is it necessary to designate distribution service as a default service;**

This question raises complicated legal issues, including the extent of state jurisdiction over default service. While distribution service remains a regulated monopoly service, designation of distribution service as a component of default service may be desirable if the Commission determines that such designation is necessary or appropriate to preserve state jurisdiction over other components of default service.

- (5) **For generation-related default service, whether the separate components of generation service to retail customers (capacity or resource reservation, energy, transmission, and ancillary services) should be treated as separate default services or bundled into a single service;**

The separate components of generation-related default service could be either bundled or unbundled, depending upon the structure of the Commission's competitive bidding process established pursuant to Code § 56-585 B 2, and whether the Commission determines that the bundling of such services is necessary to preserve or assert its jurisdiction. Another source of generation-related services may be wholesale markets established and administered by a utility's host RTO.

Even if an auction is not conducted by an RTO, its policies can play a role in a state's auction for default service. For example, the New Jersey Board of Public Utilities ("NJ BPU") is conducting auctions for "Basic Generation Service."⁶ Because

⁶ New Jersey law and orders of the NJ BPU require that Basic Generation Service ("BGS") be provided on a competitive basis. According to the PJM web site, "BGS is all retail load not signed up with a third party supplier and currently being served by the New Jersey Electric Distribution Companies (NJEDC). The New Jersey BPU approved the NJ EDCs making BGS available on a competitive basis via two separate auctions. More information on these auctions is available at: <http://www.bgs-auction.com>. The auctions begin February 3, 2003. Successful bidders in the auction will begin to serve the load on August 1, 2003. According to the auction rules the successful bidders will be required to satisfy all of the requirements of being a Load Serving Entity (LSE): 1. Be a PJM Member 2. Obtain Network Transmission Service 3. Sign the PJM Reliability Assurance Agreement (RAA) and meet your interval unforced capacity obligation 4. Meet PJM credit policy requirements."

prospective bidders must satisfy all of the requirements established by PJM to be a Load Serving Entity ("LSE"),⁷ the success of one or more auctions in Virginia may require an incumbent utility's RTO choice to be finalized, and may also require the active involvement of the RTO.

(6) For generation-related default service, whether the service should be delivered to the retail customer or to the incumbent utility;

With standard network transmission service and no RTO/LMP/CRR pricing regime, the answer to this question was more straightforward: Code § 56-586, *Emergency service provider*, laid out the statutory scheme establishing the obligation of the supplier to deliver retail electric energy into the control area serving the supplier's retail customer, and the consequences resulting from the failure of a supplier to fulfill an obligation, resulting in the failure of retail electric energy to be so delivered. With the introduction of an LMP/CRR regime, the answer to this question becomes more uncertain, as the RTO and not the incumbent utility will be providing transmission service.⁸ Moreover, in moving to this new environment, the industry continues to grapple with outstanding issues related to the allocation of transmission usage and prioritization of flows; the tagging of flows in, out, or across markets; and the criteria for determining Market/TLR coordination flowgates.⁹ Consequently, the answer may be shaped by the rules applicable to a utility's particular RTO and associated energy markets. This provision of

⁷ For PJM's requirements, see n. 6 *supra*.

⁸ Each utility will presumably have a rate schedule as part of the RTO tariff, and provisions possibly could be made to address this issue either as part of the RTO tariff or the utility's rate schedule.

⁹ See, e.g., *PJM and MISO PROPOSAL, Congestion Management Seams Issue White Paper*, Version 2a (January 14 2003).

the Act may need to be revisited in light of the RTO choices ultimately approved by the Commission and the existence, if any, of other safeguards.¹⁰

- (7) **Whether the language of the statute prohibits the provision of default service to an incumbent utility on behalf of a group of customers, i.e. could a third party provide service to an incumbent utility for indirect service to retail customers (service to satisfy load growth, specific localities, or to customer subgroups);**

The Steering Committee does not take a position on this issue at this time.

- (8) **Whether the provision of default services should differ by customer class;**

This question is framed in normative terms. Whether default services ought to differ by customer class will be dependent upon the structure of the competitive bidding process, the nature of the service(s) provided, and whether such discrimination can be justified. At bottom, all default customers need affordable, reliable electric service. Before making this determination, the Commission should first determine whether the experiences of other states suggest that aggregating customer classes may produce superior results.

- (9) **Whether different components of default service can be provided by different suppliers;**

Absent countervailing public policy considerations, including whether the bundling of default service components is necessary to preserve or extend state jurisdiction over default service, competition to provide one or more components, or a complete bundled package of components, should be encouraged as long as a particular component of default service legally may be provided by different suppliers.

¹⁰ Of course, if the Commission is trying to determine whether the generation-related default service should be sold to the incumbent utility for delivery to the retail customer, or sold directly to the retail customer, the distinction is important for jurisdictional purposes. The former would be a federally-regulated, wholesale sale for resale, while the latter would be subject to state jurisdiction as a retail sale.

- (10) Whether default service has the same meaning for different classes of customers, i.e., those who do not affirmatively select a supplier, those who are unable to obtain service from an alternative supplier, or those who have contracted with an alternative supplier who fails to perform;**

At present, virtually all customers would appear to fit the second category of customers: *viz.*, those who are unable to obtain service from an alternative supplier.

These different categories may take on additional significance should retail suppliers become active in Virginia.

- (11) How should charges for default service be collected;**

This would depend upon the identity of the billing agent, and whether this is part of a "package" or suite of services provided by the supplier.

- (12) Whether metering, billing and collecting services should be deemed components of default service; and**

This would depend upon the identity of the billing agent, and whether this is part of a "package" or suite of services provided by the supplier. Because of certain jurisdictional uncertainties, this question is wrapped up in the larger question of whether default service should be a bundled retail service.

- (13) What implications would the alternative provision of default service have for the determination of wires charges?**

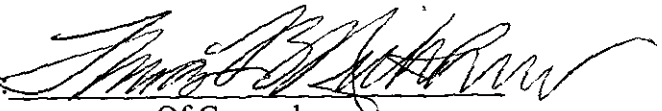
In theory, a incumbent electric utility would appear to receive the same revenue stream from a customer that it serves or from a customer that is served by an alternative provider, whether individually or on a default basis. If this is the case, the utility presumably should be indifferent when the issue is focused purely on revenue protection.

The VML/VACo APCo Steering Committee appreciates this opportunity to provide these initial responses to the Commission's questions.

Dated this 10th day of February, 2003.

Respectfully submitted,

The VML/VACo APCo Steering Committee

By 
Of Counsel

Howard W. Dobbins
Thomas B. Nicholson
Williams, Mullen
Two James Center
1021 East Cary Street
P.O. Box 1320
Richmond, VA 23218-1320
(804) 783-6904
(804) 783-6507 (facsimile)
tnicholson@wmcd.com (e-mail)

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of February 2003 a copy of the foregoing document was either hand delivered or mailed first-class postage prepaid to:

Guy T. Tripp, III
Riverfront Plaza
East Tower
951 East Byrd Street
Richmond, VA 23219-4074

Deborah J. Henry, Esq.
Allegheny Energy Service Corp.
800 Cabin Hill Dr.
Greensburg, PA 15601

John A. Pirko
LeClair Ryan P.C.
4201 Dominion Blvd., Suite 200
Glen Allen, VA 23060

Christy A. McCormick, Esq.
Office of Attorney General
Division of Consumer Counsel
900 E. Main Street, 2nd Floor
Richmond, VA 23219

Karen Bell
Dominion Resources Services
120 Tredegar Street
P. O. Box 26532
Richmond, VA 23261

Adam Chmara, Esq.
Pepco Energy Services
1300 N. 17th Street
Suite 1600
Arlington, VA 22209

Craig G. Goodman, President
National Energy Marketers Assoc.
3333 K Street NW
Suite 425
Washington, DC 20007

Carolyn L. Conrad, Esq.
Allegheny Energy Supply Co. LLC
4350 Northern Pike
Monroeville, PA 15146

Michel A. King, President
Old Mill Power Company
103 Shale Place
Charlottesville, VA 22902

Anthony J. Gambardella
Woods Rogers Hazlegrove PLC
823 East Main Street, Suite 1200
Richmond, VA 23219

Philip J. Bray, Esq.
Potomac Edison Co. d/b/a
Allegheny Power Co.
10435 Downsville Pike
Hagerstown, MD 21740-1766

Kathleen Magruder, Vice President
The New Power Company
1 Manhattanville Road
Purchase, NY 10577-2100

Donald R. Hayes, Esq.
Washington Gas Light Company
1100 H Street, N.W.
Washington, DC 20080

Dale P. Moore
Roanoke Gas Company
519 Kimball Avenue N.E.
Roanoke, VA 24030

Chris King
American Energy Institute
842 Oxford St.
Berkeley, CA 94707

Irene Leech
Virginia Citizens Consumer Council
4220 N. Fork Road
Elliston, VA 24087

D.R. Beam, Manager
Old Dominion Electric Cooperative
4201 Dominion Blvd.
Glen Allen, VA 23060

George C. Roberts
Director Regulatory Relations
SchlumbergerSema NA
30000 Mill Creek Ave., Suite 100
Alpharetta, GA 30022

R. L. Terpenney, Town Manager
Town of Christiansburg
100 E. Main Street
Christiansburg, VA 24073

Debra M. Whitner
Senior Regulatory Analyst
LG&E Energy Corp.
220 W. Main St., Floor 5
Louisville, KY 40202

Robert A. Omberg
VP Government Affairs
Virginia Delaware & Maryland As
P. O. Box 2340
Glen Allen, VA 23058

Martha Duggan
Reliant Energy Wholesale Group
3102 N. Sixth St.
Arlington, VA 22201

Jack Greenhalgh
New Era Energy, Inc.
1340-1272 N. Great Neck Rd., Suite 103
Virginia Beach, VA 23452-2230

Harry A. Warren, Jr.
President
Washington Gas Energy Services
950 Herndon Parkway, Suite 280
Herndon, VA 20170

Brian R. Greene, Esq.
Christian & Barton, LLP
909 E. Main St.
Suite 1200
Richmond, VA 23219

Linda S. Portasik, Esq.
Kentucky Utilities Company
220 W. Main St., Floor 11
Louisville, KY 40202

Michael Swider
Manager, Regulatory Affairs
Strategic Energy, LLC
2820 Charles Dunn Dr.
Vienna, VA 22180

Mary Ellen O'Neill, Esq.
Washington Gas Energy Services
1100 H St. NW
Washington, DC 20080

Ransom Owan, Ph.D.
Director, Regulatory & External Affairs
Washington Gas Energy Services
13865 Sunrise Valley Dr., Suite 200
Herndon, VA 20171-3401

August Wallmeyer
700 E. Franklin St., Suite 701
Richmond, VA 23219

Gary Cohen
Special Project Manager
Conectiv Power Delivery
P. O. Box 9239
Newark, DE 19714-9239

Randall V. Griffin, Esq.
Conectiv Power Delivery
P. O. Box 232
Wilmington, DE 19899

Edward L. Petrini, Esq.
Christian & Barton LLP
909 E. Main St., Suite 1200
Richmond, VA 23219

Gary A. Jeffries, Esq.
Dominion Resources Services, Inc.
One Chatham Center, Suite 700
Pittsburg, PA 15219

Telemac N. Chryssikos, Esq.
Washington Gas Energy Services
1100 H St. NW
Washington, DC 20080

Mark G. Thessin
United Cities Gas Company
810 Crescent Center Dr., Suite 600
Franklin, TN 37067-6226

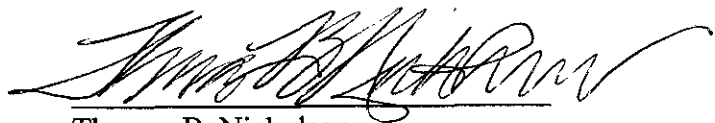
James Copenhaver, Esq.
NiSource Corporate Services Co.
9001 Arboretum Pkwy.
Richmond, VA 23235

William R. Moore, Jr.
Manager, Regulatory Issues
Conectiv Power Delivery
P. O. Box 9239
Newark, DE 19714-9239

Irene Prezeij
Strategy & Planning
FirstEnergy Solutions
395 Ghent Rd., Suite 407
Akron, OH 44333

Matthew Picardi
General Manager-Regulatory Affairs
Shell Trading
27 Winthrop Road
Hingham, MA 02043

James Savage
Policy Analyst
Pepco Energy Services
1300 N. 17th Street
Suite 1600
Arlington, VA 22209



Thomas B. Nicholson

I:\WMCDLIB\TNICHOLS\0900730.02